

STATEMENT OF
MAYNARD C. ANDERSON
DIRECTOR
FOR
SECURITY PLANS AND PROGRAMS
OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR POLICY
BEFORE THE
COMMERCE, CONSUMER AND MONETARY AFFAIRS SUBCOMMITTEE
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
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DIRECTORATE FOR FREEDOM OF INFORMATION
AND SECURITY REVIEW (OASD-PA)
DEPARTMENT OF DEFENSE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: MY NAME IS MAYNARD C. ANDERSON AND I WOULD LIKE TO EXPRESS MY APPRECIATION FOR THE OPPORTUNITY TO APPEAR HERE THIS MORNING ON BEHALF OF GENERAL RICHARD G. STILWELL, (RET.), THE DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY. GENERAL STILWELL IS RESPONSIBLE FOR ESTABLISHING THE DEFENSE INDUSTRIAL SECURITY PROGRAM POLICY. I AM THE DIRECTOR FOR SECURITY PLANS AND PROGRAMS UNDER GENERAL STILWELL. MY DIRECTORATE IS RESPONSIBLE FOR DEVELOPING THE INDUSTRIAL SECURITY POLICY SUBJECT TO MY APPEARANCE HERE TODAY; NAMELY, THOSE POLICIES PERTAINING TO CLEARED U.S. FACILITIES OR THOSE IN-PROCESS FOR A CLEARANCE WHICH COME UNDER SOME DEGREE OF FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE.

THE DEFENSE INVESTIGATIVE SERVICE IS RESPONSIBLE FOR THE ADMINISTRATION OF THE DEFENSE INDUSTRIAL SECURITY PROGRAM. AS YOU MAY RECALL, THE DIRECTOR, DEFENSE INVESTIGATIVE SERVICE PROVIDED THIS SUBCOMMITTEE WITH AN OVERVIEW OF OUR FOCI POLICY IN FORMAL TESTIMONY THIS PAST NOVEMBER. HOWEVER, MY TESTIMONY THIS MORNING WILL FOCUS ON THE DIS ROLE IN IMPLEMENTING OUR FOREIGN OWNERSHIP, CONTROL OR INFLUENCE POLICY WITH PARTICULAR EMPHASIS ON ITS APPLICATION CONCERNING THE WHITTAKER CORPORATION.

I HAVE HERE WITH ME MR. RICHARD ANDERSON. MR. ANDERSON IS THE SENIOR STAFF SPECIALIST AT DIS HEADQUARTERS IN THE AREA OF FOCI AND BRINGS WITH HIM DETAILED KNOWLEDGE OF THE DIS HANDLING OF THE WHITTAKER CASE.

MR. CHAIRMAN, WITH YOUR PERMISSION I WOULD LIKE TO READ A PREPARED STATEMENT.

THE DEPARTMENT OF DEFENSE HAS DEVELOPED OVER THE YEARS A COMPREHENSIVE INDUSTRIAL SECURITY PROGRAM DESIGNED TO SAFEGUARD CLASSIFIED INFORMATION RELEASED TO INDUSTRY. THE CURRENT AUTHORITY FOR THE PROGRAM IS EXECUTIVE ORDER 10865, ENTITLED "SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY," DATED FEBRUARY 20, 1960. AN INTEGRAL PART OF THE DEFENSE INDUSTRIAL SECURITY PROGRAM IS A SYSTEM THAT IS DESIGNED TO REASONABLY INSURE THAT CLEARED CONTRACTORS ARE NOT AFFECTED BY FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE (FOCI) TO AN EXTENT WHICH WOULD BE INIMICAL TO OUR NATIONAL SECURITY. WHEN THE NATURE AND EXTENT OF FOREIGN OWNERSHIP, CONTROL OR INFLUENCE IS SUCH THAT A REASONABLE BASIS EXISTS FOR CONCLUDING THAT THE SECURITY OF CLASSIFIED INFORMATION MAY BE JEOPARDIZED IF A FACILITY SECURITY CLEARANCE IS GRANTED OR CONTINUED, THE AFFECTED CONTRACTOR IS CONSIDERED TO BE UNDER FOCI. AS SUCH, IT WOULD BE INELIGIBLE FOR ACCESS TO CLASSIFIED INFORMATION AND A FACILITY SECURITY CLEARANCE WOULD NOT BE GRANTED OR IT WOULD BE SUBJECT TO REVOCATION, AS APPROPRIATE.

AT THIS POINT, I FEEL IT WOULD BE HELPFUL TO PROVIDE YOU WITH A BRIEF OVERVIEW OF THE FACILITY SECURITY CLEARANCE PROCESS, TO INCLUDE THE MANNER IN WHICH THE DEFENSE DEPARTMENT COMES BY INFORMATION DENOTING FOREIGN INVOLVEMENT.

UNDER THE DEFENSE INDUSTRIAL SECURITY PROGRAM, CLASSIFIED INFORMATION CANNOT BE RELEASED TO ANY EMPLOYEE OR MANAGEMENT OFFICIAL UNTIL THE FIRM IS GRANTED A FACILITY SECURITY CLEARANCE. THIS NECESSITATES THE SECURITY CLEARING OF KEY MANAGEMENT OFFICIALS PRIOR TO THE ISSUANCE OF THE FACILITY CLEARANCE. IT IS DoD POLICY THAT A FIRM OR INDIVIDUAL BE PROCESSED FOR A SECURITY CLEARANCE ONLY

WHEN A NEED FOR ACCESS TO CLASSIFIED INFORMATION CAN BE ESTABLISHED. A CLEARANCE BASED ON THIS NEED REQUIRES THAT A PROSPECTIVE CLASSIFIED CONTRACTOR BE SPONSORED BY A GOVERNMENT ACTIVITY OR A CLEARED CONTRACTOR WHO WISHES TO UTILIZE THE SERVICES OF THE PROSPECTIVE CONTRACTOR IN A CAPACITY REQUIRING ACCESS TO CLASSIFIED INFORMATION. THIS REQUIREMENT INSURES THAT INVESTIGATIVE RESOURCES ARE NOT UNNECESSARILY EXPENDED AND PREVENTS ISSUANCE OF A CLEARANCE WHEN NO VALID NEED FOR ACCESS TO CLASSIFIED INFORMATION EXISTS.

WHEN A FACILITY IS INITIALLY PROCESSED BY DIS FOR A SECURITY CLEARANCE, MANAGEMENT IS REQUIRED TO COMPLETE A DD FORM 441s ENTITLED, "CERTIFICATE PERTAINING TO FOREIGN INTERESTS." THIS FORM SOLICITS INFORMATION REGARDING A FIRM'S FOREIGN INVOLVEMENT. QUESTIONS COVER SUCH MATTERS AS FOREIGN OWNED STOCK; STOCK HELD IN "STREET NAMES;" FOREIGN INTERESTS WHO SERVE AS OFFICERS OR DIRECTORS OR WHO CONTROL THE APPOINTMENT OR TENURE OF OFFICERS OR DIRECTORS. FOREIGN SUBSIDIARIES OR AFFILIATES MUST BE NAMED AND INDIVIDUALS IDENTIFIED WHO SERVE AS OFFICERS/DIRECTORS WITH BOTH FIRMS. CONTRACTORS MUST DESCRIBE LICENSING, PATENT EXCHANGE, MARKETING, JOINT VENTURES OR SIMILAR ARRANGEMENTS WITH FOREIGN INTERESTS WHICH INVOLVE THEIR PRODUCTS OR SERVICES.

IN ADDITION, THE CONTRACTOR MUST PROVIDE DATA ON INCOME RECEIVED FROM FOREIGN SOURCES IN EXCESS OF TEN PERCENT OF THE ANNUAL GROSS INCOME. FINALLY, INFORMATION IS REQUIRED ON INDEBTEDNESS TO FOREIGN INTERESTS.

IN ADDITION TO FILING AN INITIAL DD FORM 441s, A CONTRACTOR MUST NOTIFY THE GOVERNMENT OF CHANGES IN THE INFORMATION PREVIOUSLY FURNISHED.

OR WHEN THE FIRM IS ENGAGED IN PRELIMINARY DISCUSSIONS WITH FOREIGN INTERESTS WHICH MIGHT BE EXPECTED TO RESULT IN A CHANGE TO THE DD 441s DURING SUBSEQUENT INSPECTIONS OF THE FACILITY, THE DIS INDUSTRIAL SECURITY REPRESENTATIVES REVIEW THE DD 441s WITH APPROPRIATE OFFICIALS OF THE FIRM TO DETERMINE WHETHER CHANGES HAVE TAKEN PLACE. ALTHOUGH THE CONTRACTOR IS THE PRIMARY SOURCE OF INFORMATION ON THE DD 441s THE DEPARTMENT OF DEFENSE ALSO HAS ACCESS TO REPORTS FILED WITH THE DEPARTMENT OF COMMERCE AND THE SECURITIES AND EXCHANGE COMMISSION.

DIS REPRESENTATIVES ALSO REVIEW CONTRACTOR ANNUAL REPORTS AS WELL AS THE FINANCIAL AND BUSINESS SECTIONS OF VARIOUS PUBLICATIONS. NO MATTER THE SOURCE, THE INFORMATION IS ANALYZED BY DIS AND QUICKLY ACTED UPON IN ACCORDANCE WITH ESTABLISHED POLICY. HOWEVER, THE ACTION TAKEN BY DIS IS DEPENDENT UPON THE SOURCE AND NATURE OF THE INFORMATION INVOLVED.

WHENEVER THERE IS SIGNIFICANT EVIDENCE OF FOCI, THE CONTRACTOR'S FACILITY SECURITY CLEARANCE IS INVALIDATED. A FACILITY WITH AN INVALID CLEARANCE IS INELIGIBLE FOR ACCESS TO ANY NEW OR ADDITIONAL CLASSIFIED INFORMATION SUBSEQUENT TO THE DATE OF THE INVALIDATION ACTION. FURTHER, THE PERTINENT GOVERNMENT CONTRACTING ACTIVITIES ARE NOTIFIED OF THE ACTION AND REQUESTED TO DETERMINE WHETHER THE CONTRACTOR MAY CONTINUE TO PERFORM ON THE EXISTING CLASSIFIED CONTRACTS. ONCE A FACILITY CLEARANCE IS INVALIDATED, THE CONTRACTOR HAS THIRTY DAYS IN WHICH TO ACHIEVE OR INITIATE SATISFACTORY RESOLUTION. DURING THE INTERVENING PERIOD, THE CASE IS DISCUSSED IN DETAIL WITH THE CONTRACTOR AND ITS COUNSEL. IF AFTER THIRTY DAYS THE FACILITY FAILS

TO SUBMIT AN ACCEPTABLE PLAN FOR PROMPT AND EFFECTIVE RESOLUTION, FAILS TO ADHERE TO SUCH A PLAN, OR IS UNABLE OR UNWILLING TO EFFECTIVELY DEAL WITH THE PROBLEM, ARRANGEMENTS WOULD BE MADE TO RECOVER THE CLASSIFIED MATERIAL AND THE FACILITY SECURITY CLEARANCE WOULD BE SUBJECT TO REVOCATION.

I THINK IT SHOULD BE NOTED THAT OVER THE YEARS U.S. FIRMS HAVE BEEN ENCOURAGED BY THE GOVERNMENT TO DEVELOP AND EXPAND THEIR FOREIGN MARKETS. IT WAS PRIMARILY U.S. INTERESTS WHO WERE THEN DOING THE INVESTING OVERSEAS. IN RECENT YEARS, EVENTS AND CIRCUMSTANCES HAVE CHANGED. FOREIGN INTERESTS, WITH SUBSTANTIAL INVESTMENT CAPITAL, NOW SEE OPPORTUNITIES TO INVEST IN U.S. INDUSTRY TO INCREASE THEIR EARNINGS. FURTHER, THE DEFENSE DEPARTMENT SUPPORTS U.S. CONTRACTOR INVOLVEMENT IN NUMEROUS MULTILATERAL COOPERATIVE DEFENSE PROJECTS IN SUPPORT OF OUR NATIONAL SECURITY. THEREFORE, IT IS NOT TERRIBLY UNCOMMON FOR OUR CLEARED DEFENSE CONTRACTORS, CERTAINLY THE LARGER AND MORE DIVERSIFIED ONES, TO HAVE SOME DEGREE OF FOREIGN INVOLVEMENT.

THIS FOREIGN INVOLVEMENT OFTEN REACHES REPORTABLE LEVELS REQUIRING DIS REVIEW. MOST CASES ARE REVIEWED AND ADJUDICATED AT THE DIS REGIONAL LEVEL. INSTANCES OF MORE SIGNIFICANT FOREIGN INVOLVEMENT ARE FORWARDED TO DIS HEADQUARTERS FOR DETERMINATION OF CONTINUED FACILITY SECURITY CLEARANCE ELIGIBILITY. OF THESE, FOUR CATEGORIES OF FOCI CASES MUST BE REVIEWED PERSONALLY BY THE DIRECTOR, DIS. THESE CATEGORIES ARE AS FOLLOWS:

1. FOREIGN INTERESTS OWN OR HAVE OPTIONS TO ACQUIRE STOCK IN EXCESS OF 20 PERCENT.

2. STOCK OWNERSHIP BY FOREIGN INTERESTS WHERE A VOTING TRUST AGREEMENT, PROXY AGREEMENT, OR BOARD RESOLUTION IS NECESSARY TO EFFECTIVELY INSULATE THE CLEARED FACILITY.

3. FOREIGN INDEBTEDNESS EXISTS AMOUNTING TO 15 PERCENT OR MORE OF THE CURRENT ASSETS OF THE CORPORATION, OR WHERE OVER 20 PERCENT OF THE STOCK IN THE U.S. CORPORATION HAS BEEN PLEDGED TO A FOREIGN INTEREST AS COLLATERAL.

4. MORE THAN FIVE PERCENT INCOME IS DERIVED FROM COMMUNIST COUNTRIES.

I WOULD NOW LIKE TO DESCRIBE THE PRIMARY FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE FACTORS PERTINENT TO THE WHITTAKER CORPORATION AND THE RATIONALE USED BY THE DEFENSE INVESTIGATIVE SERVICE IN FAVORABLY ADJUDICATING THIS CASE.

THE WHITTAKER CORPORATION IS A PUBLICLY OWNED FIRM INCORPORATED IN THE STATE OF CALIFORNIA. WHITTAKER IS CLEARED TOP SECRET AND WAS PERFORMING ON APPROXIMATELY 33 CLASSIFIED CONTRACTS AS OF FEBRUARY OF THIS YEAR. A LIST OF THESE CONTRACTS HAVE BEEN FURNISHED TO THIS COMMITTEE.

ALTHOUGH THE WHITTAKER CORPORATION SUBMITTED INFORMATION SUFFICIENT ENOUGH TO WARRANT DIS REVIEW AND DETERMINATION IN THE PAST, IT WASN'T UNTIL JANUARY 1979 THAT ITS FOREIGN INVOLVEMENT BECAME A MATTER OF SPECIAL CONCERN TO DIS. THE DD FORM 441s SUBMITTED BY WHITTAKER AT THAT TIME REFLECTED STOCK OWNERSHIP BY OLAYAN INVESTMENTS COMPANY ESTABLISHMENT, A LIECHTENSTEIN CORPORATION OWNED BY MR. SULIMAN S. OLAYAN, A SAUDI ARABIAN NATIONAL. IF A FOREIGN ENTITY OWNS A SIGNIFICANT PORTION OF A COMPANY, THE ABILITY TO INFLUENCE OR CONTROL IS PRESUMED TO EXIST. GENERALLY SPEAKING, THIS OWNERSHIP WILL BE MANIFEST BY THE APPOINTMENT OF OFFICERS OR DIRECTORS IF OFFICERS OR DIRECTORS ARE APPOINTED BY A FOREIGN OWNER, OR THE FOREIGN OWNER HAS THE ABILITY TO APPOINT OFFICERS OR DIRECTORS AT HIS DISCRETION, THEN ONCE AGAIN, CONTROL AND INFLUENCE MUST BE PRESUMED. HOWEVER, IN THE CASE OF WHITTAKER, THE PERTINENT FACTS WERE FULLY REVIEWED BY DIS AND A FAVORABLE DECISION WAS RENDERED. THAT PARTICULAR DECISION WAS BASED, IN PART, ON THE FACT THAT THE VOTING POWER OF THE FOREIGN OWNED STOCK WAS INSUFFICIENT TO ELECT REPRESENTATION TO THE WHITTAKER CORPORATION BOARD OF DIRECTORS.

THE MOST RECENT FOCI EVALUATION BY DIS WAS RENDERED IN JULY 1981. AT THAT TIME, MR. OLAYAN OWNED 5.1% OF THE WHITTAKER STOCK. THIS AMOUNT CONTINUED TO BE INSUFFICIENT TO ELECT A MEMBER TO WHITTAKER'S BOARD OF DIRECTORS. ALSO REVIEWED AT THE TIME WAS A WHITTAKER BOARD RESOLUTION WHICH ACKNOWLEDGED THE FOREIGN OWNERSHIP AND REITERATED THE FIRM'S SECURITY OBLIGATIONS UNDER THE INDUSTRIAL SECURITY PROGRAM. THIS RESOLUTION HAD BEEN PREVIOUSLY REQUESTED BY DIS. A BOARD RESOLUTION MAY BE USED TO MITIGATE FOREIGN OWNERSHIP UNDER THE FOLLOWING CONDITIONS:

1. THE PERCENTAGE OF VOTING STOCK OWNED BY FOREIGN INTERESTS IS NOT MORE THAN 15%.

2. THE AMOUNT OF STOCK OWNED BY THE FOREIGN INTERESTS IS NOT SUFFICIENT TO ELECT REPRESENTATION TO THE BOARD.

3. THERE IS NO AGREEMENT WHEREBY THE FOREIGN INTEREST IS PERMITTED TO HAVE REPRESENTATION ON THE BOARD.

4. THE DEPUTY DIRECTOR (INDUSTRIAL SECURITY), HQ DIS, MAKES A DETERMINATION THAT, BASED ON ALL OF THE AVAILABLE FACTS, A BOARD RESOLUTION REPRESENTS A SATISFACTORY RESOLUTION OF THE CASE.

IF ANY ONE OF THE AFOREMENTIONED CONDITIONS CANNOT BE SATISFIED, EITHER A VOTING TRUST OR PROXY AGREEMENT WOULD HAVE TO BE PLACED INTO EFFECT OR THE CLEARED FIRM'S FACILITY CLEARANCE WOULD BE SUBJECT TO REVOCATION.

ALSO EVALUATED IN 1981 WAS WHITTAKER CORPORATION'S INCOME FROM WHITTAKER SAUDI ARABIA, LTD. THIS FIRM PROVIDES HEALTH CARE SERVICES IN SAUDI ARABIA AND IS 70 PERCENT OWNED BY THE WHITTAKER CORPORATION. TOTAL REPORTED SALES TO SAUDI ARABIA CONSTITUTED 13.1 PERCENT OF THE CONSOLIDATED SALES OF WHITTAKER.

THE WHITTAKER CORPORATION FORM 10-K FOR THE FISCAL YEAR ENDED OCTOBER 31, 1981, INDICATED THAT THE SAUDI ARABIAN INCOME HAD

INCREASED TO APPROXIMATELY \$278 MILLION OR 16.62 PERCENT OF WHITTAKER CONSOLIDATED SALES FOR THAT PERIOD. DIS EVALUATES INCOME FROM FOREIGN SOURCES IN CONJUNCTION WITH ALL OTHER FACTORS PRESENT IN A PARTICULAR CASE. AN ADVERSE DECISION WOULD BE APPROPRIATE WHEN THE FOCI FACTORS PROVIDE A REASONABLE BASIS FOR A CONCLUSION THAT COMPROMISE OF CLASSIFIED INFORMATION MAY RESULT. IN CASES WHERE INCOME IS THE ONLY FACTOR, AN ADVERSE DECISION WOULD BE REASONABLE IF A FIRM DERIVED A SUBSTANTIAL PERCENTAGE OF ITS GROSS INCOME FROM COMMUNIST COUNTRIES, OR FROM COUNTRIES WHICH ARE OVERTLY HOSTILE TO THE UNITED STATES. THE AFOREMENTIONED INCOME FIGURE DOES NOT INDICATE FINANCIAL DEPENDENCE ON THE KINGDOM OF SAUDI ARABIA NOR IS SAUDI ARABIA CONSIDERED HOSTILE TO THE UNITED STATES.

THE FOREGOING REPRESENTS AN OVERVIEW OF THE APPLICATION OF OUR FOCI POLICY AS CONCERNS THE WHITTAKER CORPORATION. WHITTAKER HAS BEEN FULLY COOPERATIVE AND OPEN IN ITS DEALINGS WITH DIS ON THESE MATTERS. THE FIRM IS PRESENTLY ASSEMBLING A NEW 441s FOR REEVALUATION AT THE REQUEST OF DIS.

IN CONCLUSION, I WOULD LIKE TO EMPHASIZE THAT OUR FOCI POLICY AND ITS ATTENDANT PRACTICES AND PROCEDURES OFFER EFFECTIVE PROTECTION FOR OUR CLASSIFIED INFORMATION. HOWEVER, IT IS NOT FOOLPROOF AND CANNOT GUARANTEE THAT UNAUTHORIZED DISCLOSURES WILL NOT OCCUR. THIS IS A GOAL WHICH IS SIMPLY NOT ATTAINABLE. HOWEVER, WE ARE CONTINUOUSLY EVALUATING THE POLICY TO INSURE THAT IT IS NEITHER UNREASONABLY STRINGENT NOR IRRESPONSIBLY WEAK AND INEFFECTIVE.

NONETHELESS, WE SHARE THIS COMMITTEE'S CONCERN RELATIVE TO PROBLEMS ASSOCIATED WITH BENEFICIAL OWNERS OF STOCK HELD IN STREET NAMES AND NOMINEE ACCOUNTS. CONTRACTORS ARE REQUIRED TO IDENTIFY ALL KNOWN FOREIGN STOCK OWNERSHIP, ABOVE THE 5% REPORTING THRESHOLD, REGARDLESS OF THE MANNER IN WHICH THE STOCK IS REGISTERED. THIS DISCLOSURE IS MADE UNDER THE CRIMINAL PENALTIES FOR MISREPRESENTATION PRESCRIBED IN 18 U.S. CODE, SECTION 1001. SHOULD A PREVIOUSLY UNKNOWN FOREIGN INVESTOR SUBSEQUENTLY ATTEMPT TO EXERT INFLUENCE OR GAIN REPRESENTATION ON THE CORPORATION'S BOARD OF DIRECTORS, THE CONTRACTOR WOULD BE OBLIGATED TO REPORT THE SITUATION AT THAT TIME. THE DoD FOCI POLICY WOULD THEN BE APPLIED. THE DEFENSE INVESTIGATIVE SERVICE RESPECTS THE CONFIDENTIALITY OF THE RELATIONSHIP BETWEEN STOCKHOLDERS AND THEIR BANKERS OR BROKERS TO THE EXTENT THAT THIS CONFIDENTIALITY IS IN ACCORD WITH DISCLOSURE POLICY OF THE SECURITIES AND EXCHANGE COMMISSION. WE WOULD WELCOME REGULATORY CHANGES OR LEGISLATION WHICH WOULD PERMIT DIS ACCESS TO THE IDENTITY OF SUCH BENEFICIAL STOCKHOLDERS.

MR. RICHARD ANDERSON AND I ARE NOW PREPARED TO ANSWER ANY QUESTIONS YOU MAY HAVE.